

EXHIBIT A

EXHIBIT A

In re: Cash Cloud Inc.

ROUGH DRAFT TRANSCRIPT OF

Tanner James

October 9, 2023

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 IN RE:

4 CASH CLOUD INC., dba COIN
5 CLOUD,

Debtor.

)
)
) Case No.
) BK-23-10423-MKN
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13 DEPOSITION OF DEBTOR CASH CLOUD INC., DBA COIN CLOUD

14 PURSUANT TO FRCP 30(b)(6)

15 TANNER JAMES, VOLUME II

16 Taken on Monday, October 9, 2023

17 By a Certified Court Reporter

18 At 10:06 a.m.

19 At 3883 Howard Hughes Parkway

20 Las Vegas, Nevada

21

22 Reported by: Wendy Sara Honable, CCR No. 875
23 Nevada CSR No. 875

California CSR No. 13186

Washington CCR No. 2267

24 Utah CCR No. 7357039-7801

Job No. 54782, Firm No. 116F

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EXAMINATION INDEX

5

EXAMINATION BY:

PAGE NO.

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MR. KINAS

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MR. MATOTT

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EXHIBIT INDEX

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EXHIBIT NO.

DESCRIPTION

PAGE NO.

15

16

Exhibit 1

Genesis Global Holdco, LLC's
Second Notice of Deposition of
Tanner James
dated 10/2/23; 2 pages

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Exhibit 2

Supplemental Declaration of
Tanner James in Support of
Omnibus Reply in Support of
Motion For Entry of an Order
Authorizing Debtor to
Surcharge the Collateral of
Genesis Global Holdco, LLC,
Enigma Securities Limited, and
AVT Nevada, LP, and Attached
Documentation
dated 9/15/23; 13 pages

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1 INDEX: (continuing)

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4 Exhibit 3 Third Supplemental Declaration ^
5 of Tanner James in Support of
6 Omnibus Reply in Support of
7 Motion for Entry of an Order
8 Authorizing Debtor to Surcharge
9 the Collateral of Genesis
Global Holdco, LLC, Enigma
Securities Limited, and AVT
Nevada, LP, and Attached
Documentation
dated 9/26/23; 86 pages

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1 P R O C E E D I N G S
2 (Prior to the commencement of the
3 deposition, all parties present agreed to waive
4 statements by the court reporter pursuant to Rules
5 30(b)(5)(A) and 30(b)(5)(C) of the NRCP/FRCP.)
6 (Exhibit Nos. 1, 2, and 3 marked
7 for identification.)
8 (Witness sworn.)
9

10 TANNER JAMES,
11 having been first duly sworn, was
12 examined and testified as follows:
13
14

15 EXAMINATION

16 BY MR. KINAS:

17 Q. Good morning. Could you state your name
18 for the record, please?

19 A. Of course. My name is Tanner James.

20 Q. Tanner, my name is Robert Kinas,
21 K-i-n-a-s. I'm with Snell & Wilmer, and my client
22 is Genesis.

23 Since we last met on August 22nd for your
24 first depo, you have filed a second supplement at
25 ECF 1244 and a third supplement at 1307. So I think



1 I've handed you Exhibits 2 and 3 there.

2 Could you just confirm that Exhibit 2 is
3 your second supplement at ECF 1244?

4 **A. (Examining documents.)**

5 **Yes.**

6 Q. And then if you could look at the
7 Exhibit 3, is that your third supplement, ECF 1307?

8 **A. (Examining documents.)**

9 MR. MATOTT: Yeah. Andrew Matott with
10 the Official Committee. I think it's 1281 -- right?
11 -- the second objection that we're here on -- or the
12 second declaration?

13 MR. KINAS: I have a supplemental
14 declaration of 1244 and 1307.

15 MR. MANN: That's a good point. This
16 one, the 1244, that's the supplemental. Then
17 there's one that's called the second supplemental,
18 which is, I believe, the number that he just
19 mentioned.

20 **THE WITNESS: Right. So this -- this one**
21 **without the fees, I think, is the third one, right?**

22 MR. MANN: Yes.

23 **THE WITNESS: Okay. So are we missing**
24 **the second or the --**

25 MR. MANN: Yeah.

1 MR. KINAS: Which one are we missing?

2 12?

3 MR. MANN: It's the second supplemental.

4 So you have the first supplemental here and the
5 third one, and we're missing the second one.

6 MR. KINAS: And the ECF -- provide me
7 with the ECF on that one again? 1280- -- was it
8 1281?

9 MR. MATOTT: Yeah, 1281.

10 MR. KINAS: Great.

11 MS. KISSNER: This is Andrew Kissner of
12 MoFo. If it's helpful, I think the second
13 supplemental declaration was more or less to the
14 effect of, Here's an e-mail from Enigma. I will be
15 filing a third supplemental declaration next week,
16 and I think that was the gist of that declaration.

17 MR. KINAS: Okay. Perfect.

18 MR. MANN: And I agree to that
19 abbreviated statement what he said about it.

20 MR. KINAS: All right. Excellent. All
21 right. So --

22 MR. MATOTT: Yeah. I think that document
23 speaks for itself. The standard being submitted.

24 MR. KINAS: Thanks.

25 /////

1 BY MR. KINAS:

2 Q. All right. So in front of you, you've
3 got ECF 1244 and ECF 1307; is that correct?

4 A. Looks like it's cut off a little bit on
5 the top, but, no, it looks like 1507 to me.

6 Q. Excellent.

7 And then I've handed you what's marked as
8 Exhibit 1, which -- if you'd take a look at that and
9 see if that's the notice of your second deposition
10 for today.

11 A. Yes, it is.

12 Q. Excellent. Thank you for appearing
13 today. The court reporter is here. Just like in
14 your first deposition, you understand that you're
15 under oath, correct?

16 A. Yes, I do.

17 Q. And are you able to answer my questions
18 truthfully today, to the best of your knowledge?

19 A. Yes, I can.

20 Q. So I'm not here to trick you. If you
21 don't understand any of my questions, just let me
22 know and I'm happy to rephrase.

23 Are you ready to get started?

24 A. Yes.

25 Q. So let's start with what is Exhibit 2.

1 So this is ECF 1244, and this is your supplemental
2 declaration.

3 Take a look at that and let me know if
4 you've seen that document before.

5 **A. (Examining documents.)**

6 **Yes, I have.**

7 Q. And on Page -- it's the second page of
8 Exhibit 1244. It's actually marked "Page 1."

9 But do you see where the -- your name --
10 your signature is affixed down below?

11 Do you see that?

12 **A. I'm sorry. You said which page?**

13 Q. Well, it's actually the second page of
14 Exhibit 2 at the bottom.

15 **A. Yes, I see that.**

16 Q. And did you authorize the debtor to affix
17 your electronic signature there?

18 **A. Yes, I did.**

19 Q. So if you could turn to the second page
20 of Exhibit 2, do you see where, on Line 16, there's
21 a Paragraph 4, numbered 4?

22 **A. Yes, I do.**

23 Q. Could you read that to yourself for a
24 second and let me know when you're done?

25 **A. (Examining documents.)**

1 (Discussion off the record.)
2 (Questions and Answers on Page ^,
3 Lines ^ through ^, read by the
4 Reporter.)
5

6 BY MR. KINAS:

7 Q. Mr. James, have you had a chance to read
8 Paragraph 4 to yourself?

9 **A. Sorry. Give me a moment to reread it.**

10 (Examining documents.)

11 Okay. Yes, I read it.

12 Q. So we're going to work through this
13 paragraph phrase by phrase. So the first phrase is,
14 "on request by the debtor."

15 Do you see that?

16 **A. Yes, I do.**

17 Q. And so who at the debtor requested you to
18 undertake additional tasks?

19 **A. The conversation that I had was with**
20 **counsel.**

21 Q. And who was the -- who was that?

22 **A. I believe the conversation was with Nick**
23 **Koffroth and maybe one additional with Brett**
24 **Axelrod.**

25 Q. And what were you requested to do?

1 A. I was requested to review the
2 professional fees associated with the surcharge, to
3 the extent there were invoices available, and
4 determine whether or not they were related to the
5 sale process and the -- or sorry -- the surcharge
6 and the sale process.

7 Q. And do you recall approximately when the
8 debtor reached out to you about this additional
9 task?

10 A. I don't remember the exact date, but
11 several days before it was due; maybe a week before
12 it was due on the 20th of September. Maybe a little
13 bit longer, but I wouldn't say longer than two weeks
14 before.

15 Q. And once you received this new request
16 from the debtor, what steps did you take?

17 MR. MATOTT: Objection.

18 THE WITNESS: The first step that I had
19 took -- and maybe these were out of order, but just
20 listing the steps, I consolidated or had somebody on
21 my team consolidate all of the filed invoices for
22 the relevant period.

23 I've had all those invoices compiled into
24 a folder that was easy to review. To the extent
25 there were invoices missing or not filed on the

1 docket, like FTIs, I requested those from SEI.

2 I also reached out to Stretto for
3 additional clarification on the details of their
4 billings related to noticing on the sale process
5 that were included in the surcharge.

6 And then I started my actual review of
7 the invoices and the fee statements going through
8 each of the individual invoices checking the dollar
9 amounts as it related to the sale process and asset
10 disposition task codes for each of the
11 professionals' billings, checked that they were
12 consistent with the estimates or noted if they
13 weren't; the estimates as in from the original
14 surcharge analysis.

15 After I did that for the professionals
16 that had those task codes, I reviewed the time
17 entries for those task codes specifically looking at
18 each time entry making note of the date -- the date
19 of the time entry, the content of the memo for that
20 time entry as it related to -- or if it was relevant
21 to the sale process.

22 The timekeeper for each time entry,
23 making note, you know, of -- or checking, is maybe a
24 better way to put it, of who the timekeeper was and
25 my general understanding of their role as a



1 representative of whichever party they were retained
2 by, and my understanding of their involvement in the
3 time entry and the contents of that memo.

4 Also checking the task code associated
5 with each time entry. I reviewed the time entries
6 for each period for the relevant included surcharge
7 fees to the extent that they were in that form.

8 The exception to that being, at least
9 from memory, Stretto whose fees were included in the
10 surcharge, not on an hourly basis, but on a postage
11 and noticing cost basis.

12 That conversation with Angela Tsai at
13 Stretto, both had a conversation on the phone with
14 her and an e-mail exchange where she outlined to me
15 the different documents that were noticed that were
16 included in the surcharge amount for Stretto's fees,
17 the number of pages of each of those documents that
18 were noticed, and the number of parties that were
19 noticed for each document with the cost of -- I
20 believe it was printing and mailing the documents to
21 each of the noticing parties noting that, of
22 \$27,000, roughly, of noticing costs that were
23 included in the surcharge, there were, I believe, in
24 excess of 20,000 not unique parties, but instances
25 where parties were noticed.

1 From memory, I believe it was almost
2 exactly 27,000 parties noticed. After that I had a
3 -- conversations with counsel explaining my
4 findings, the amounts that I found included in the
5 fees and costs that I reviewed, and then began
6 developing the declaration or the filing with
7 counsel, making my comments in the ordinary process
8 of developing the filing one of these.

9 I would say that's a high level of the
10 steps that I took.

11 BY MR. KINAS:

12 Q. And so as a result of your investigation
13 and analysis, did you conclude that the professional
14 fees were related to the sale of the assets?

15 A. The professional fees that I reviewed and
16 that were included in the surcharge, yes.

17 Q. And as a result of your review, did you
18 determine that any professional fees were
19 unnecessary?

20 A. No.

21 Q. And as a result of your review, did you
22 find that any of the professional fees were
23 unreasonable?

24 A. No.

25 Q. And have you -- in your time at Province,

1 have you been on any projects where you've been
2 asked to review professional fees before for
3 reasonableness and necessity?

4 MR. MANN: Objection to form.

5 **THE WITNESS: Yes.**

6 BY MR. KINAS:

7 Q. And how many -- how many --

8 MR. MATOTT: And just -- excuse me.

9 Sorry. Andrew Matott with the committee. If we
10 could have the record reflect that a debtor
11 objection is also shared by the committee for
12 purposes of today.

13 MR. MANN: And you can still answer.

14 **THE WITNESS: Sure.**

15 BY MR. KINAS:

16 Q. So what were the -- what other -- how
17 many other projects have you been involved in where
18 you've reviewed professional fee statements for
19 necessity and reasonableness?

20 A. I would say, most prominently, I'm often
21 tasked with reviewing Province's own professional
22 fees prior to them being billed and filed, making
23 sure to note reasonable and necessity of the fees
24 that we're billing our clients, checking them,
25 triangulating for errors, duplicate billings,

1 excessive time, you know, correct matters, things of
2 that nature more generally.

3 On an individual time-entry basis, making
4 sure that task codes are correct for the type of
5 work that's done, making sure timekeepers are not
6 transitory and, I guess, set differently; not
7 billing small amounts without a significant role or
8 a material role on the project.

9 I'm also often, in the capacity of a
10 debtor financial adviser, in charge of maintaining,
11 developing, reviewing the DIP budgets, and that
12 often comes with tracking professional fees filed or
13 invoiced by other professionals, keeping track of
14 those invoices and monitoring them, you know,
15 relative to the budget's projections.

16 Q. Have you -- have you ever testified as an
17 expert in any contested matter relating to the
18 reasonableness and necessity of fees?

19 A. I've not testified as an expert, no.

20 Q. And during your years at Province, is
21 this your first involvement in a surcharge motion?

22 A. I believe so. At least from the seat of
23 the debtor's financial adviser. I've done several
24 committee cases, and maybe there was one in -- one
25 of those engagements, but not that I remember.

1 Q. And as part of your additional analysis,
2 did you examine any of the professional fees to see
3 if there was a -- they had a specific benefit to any
4 secured creditor?

5 A. I examined --

6 MR. MATOTT: Objection. Form.

7 THE WITNESS: I examined the professional
8 fees. On my review of the professional fees, I
9 certainly made note of the timekeepers, the dates of
10 the time entries and work streams relative to
11 certain milestones, and kept in mind that it may be
12 impossible to determine that without a single
13 time-entry effort from one of the professionals,
14 that the sale would not have closed.

15 But I did keep in mind that, with the
16 efforts and work done billed by each of the
17 professionals, that the sale did close with net
18 proceeds available to the secured lenders who
19 encumbered that collateral.

20 BY MR. KINAS:

21 Q. So I understand that response.

22 My question is, when you were looking
23 through the professional fee entries, you know, date
24 by date, did you make a note as to whether this time
25 entry benefitted one of the secured creditors or

1 not?

2 **A.** I certainly confirmed that my review of
3 the time entries that I found the fees billed did,
4 in fact, contribute to the successful closing
5 approval ordering of the sale and collection of the
6 proceeds from the buyer.

7 Q. Okay. So returning back to Exhibit 2,
8 Paragraph Number 4, the second phrase is, "and in
9 response to the issues raised in the objections."

10 Do you see that phrase?

11 **A.** (Examining documents.)

12 I'm sorry. You said in Paragraph 4?

13 Q. So it's Line 16 --

14 **A.** Oh, yes, I see.

15 Q. -- in response to the issues raised by --
16 in the objections.

17 Do you see that?

18 **A.** Yes.

19 Q. And when you refer to "the objections,"
20 are you referring to the objections filed by AVT,
21 Enigma, and Genesis to the debtor's surcharge
22 motion?

23 **A.** Generally speaking, yes.

24 Q. Are you aware that there were three
25 objections to the surcharge motion?

1 **A. That sounds right to me.**

2 **Q. And so did you read the objection of AVT?**

3 **A. I certainly reviewed them, but I'm also**
4 **not an attorney.**

5 **Q. I just want to know if you read the AVT**
6 **objection.**

7 **A. Yes. I believe that I --**

8 **MR. MATOTT: Asked and answered.**

9 **THE WITNESS: -- reviewed it at one**
10 **point.**

11 **BY MR. KINAS:**

12 **Q. And did you read the Enigma objection?**

13 **A. I believe I did review it at one point,**
14 **yes.**

15 **Q. And did you review the Genesis objection?**

16 **A. I believe I did review it, yes.**

17 **Q. What were the issues raised in these**
18 **objections that caused you to do additional**
19 **analysis?**

20 **MR. MATOTT: Objection. Form.**

21 **THE WITNESS: I would rather leave that**
22 **legal analysis to the attorneys, but I do know that**
23 **counsel instructed me to perform the analysis based**
24 **on their findings.**

25 **////**

1 BY MR. KINAS:

2 Q. So when you say "counsel," is this the
3 debtor's counsel?

4 A. Yes.

5 Q. And they instructed you to do additional
6 analysis as to the reasonableness of the fees?

7 MR. MANN: Objection to form.

8 MR. MATOTT: Objection to the extent it
9 calls for attorney-client privilege.

10 MR. MANN: Yeah. So he's asserting
11 attorney-client privilege. I would say that you
12 shouldn't respond to that.

13 BY MR. KINAS:

14 Q. So were you -- what did you then do?

15 You reviewed the invoices to see if the
16 fees were reasonable; is that true?

17 A. Yes.

18 Q. And you were -- you reviewed the invoices
19 of the professionals to see if the fees were
20 necessary, correct?

21 MR. MANN: Objection. Form.

22 THE WITNESS: Yes.

23 BY MR. KINAS:

24 Q. And did you review the fees to see
25 whether any of them provided a quantifiable benefit

1 to the secured creditors?

2 MR. MANN: Objection to form.

3 MR. MATOTT: Objection. Calls for a
4 legal conclusion.

5 THE WITNESS: I reviewed the fees with
6 the context that the fees included within the
7 invoices that I was reviewing -- specifically, the
8 related task codes -- were each a piece of the
9 puzzle that ultimately resulted in a sale with a
10 buyer successfully closing after being approved by
11 the consultation parties and ultimately ordered by
12 the court.

13 BY MR. KINAS:

14 Q. Are you -- when you read the objections,
15 did you read any of the cases cited by any of the
16 parties in their briefs?

17 MR. MANN: Objection to form.

18 THE WITNESS: I may have loosely reviewed
19 highlights or high-level details of the supporting
20 cited law and the reply and initially the motion
21 filed by the debtor, but I'm not an attorney and
22 leave that legal work and legal analysis to them.

23 BY MR. KINAS:

24 Q. No problem at all leaving the legal work
25 to the attorneys.

1 I just want to know, did you read any
2 cases as part of your preparation to do your
3 analysis related to 506- --

4 MR. MATOTT: Objection. Asked and
5 answered.

6 MR. MANN: Yeah. Objection to form as
7 well.

8 BY MR. KINAS:

9 Q. So did you read the Debbie Reynolds case
10 from the Ninth Circuit at 255 F.3rd 1061 as part of
11 your preparation to do your job?

12 A. I did not read that specific case law,
13 but I did communicate my findings clearly to counsel
14 of the debtor, and if they had -- you know, I guess,
15 "presumably" is maybe the word for it, as they had
16 cited in these motions and replies familiarized
17 themselves with and reviewed that case law.

18 Q. So if you would go back to now, same
19 Paragraph 4, I would like you -- Lines 18 and 19.

20 Do you see where it says, you're
21 preparing an analysis of the professional fees
22 included in the surcharge expenses set forth in the
23 motion to analyze the reasonableness and necessity
24 in the debtor's efforts to preserve and enhance the
25 value of the secured creditors' collateral for the

1 benefit of the secured creditors.

2 Do you see that phrase?

3 **A. Yes.**

4 Q. So as to the last phrase where it says,
5 "for the benefit of the secured creditors," is that
6 a Taylor-James-originated phrase that you came up
7 with, or is that some -- is that a phrase that was
8 supplied to you?

9 MR. MANN: Objection to form.

10 MR. MATOTT: Objection to the extent it
11 calls for anything that would divulge
12 attorney-client privilege.

13 **THE WITNESS: Yeah. I would say that --**
14 **I guess I would assume that the conversation that I**
15 **had with the attorneys about this matter were**
16 **between them and I.**

17 BY MR. KINAS:

18 Q. So did you -- did you write Paragraph 4,
19 or did someone else write Paragraph 4?

20 MR. MANN: Objection to form.

21 MR. MATOTT: Objection to form.

22 **THE WITNESS: Sure. I didn't, you know,**
23 **sit down and type this, but I certainly sat with**
24 **counsel as we developed this declaration, gave my**
25 **comments and feedback as necessary.**

1 BY MR. KINAS:

2 Q. So the last phrase of that sentence on
3 Line 19 says, "for the benefit of the secured
4 creditors."

5 Do you see that?

6 A. Yes.

7 Q. Now, you're aware that the debtor has
8 unsecured creditors, correct?

9 A. Of course.

10 Q. And you're aware that the debtor has
11 equity holders, correct?

12 A. Of course.

13 Q. So why -- why didn't your phrase say "for
14 the benefit of secured creditors, unsecured
15 creditors, and equity holders"?

16 MR. MANN: Objection to form.

17 THE WITNESS: I don't believe that those
18 parties would have been relevant to the legality of
19 the surcharge and the fees that were being reviewed
20 because of that spew.

21 BY MR. KINAS:

22 Q. So as you sit here today, do you believe
23 that the unsecured creditors are not going to
24 receive a distribution from this bankruptcy estate?

25 MR. MANN: Objection to form.

1 MR. MATOTT: Objection. Calls for
2 speculation.

3 THE WITNESS: I believe that the debtor's
4 analysis of its Chapter 11 liquidating plan may have
5 a scenario where unsecured creditors receive a
6 distribution.

7 But that is still far to be determined by
8 the results of several assets that need to be
9 collected, some of which have already been
10 successfully initiated with promising results.

11 BY MR. KINAS:

12 Q. And as to the equity holders, as you sit
13 here today, do you believe that the equity holders
14 will be receiving a distribution under the plan?

15 MR. MANN: Objection to form.

16 THE WITNESS: In my -- in my personal
17 analysis or review of what's transpired in this
18 bankruptcy, I would be very surprised if equity
19 received a distribution.

20 BY MR. KINAS:

21 Q. So going back to Paragraph -- or to Line
22 18 of Exhibit 2, do you see the phrase where it says
23 you were -- "again to analyze the reasonableness and
24 necessity in the debtor's efforts to preserve and
25 enhance the value of the secured creditors'

1 collateral for the benefit of the secured
2 creditors."

3 So when -- when did you determine that
4 the debtor's efforts were solely related to benefit
5 the secured creditors only?

6 MR. MANN: Objection to form.

7 MR. MATOTT: Objection to form.

8 THE WITNESS: I guess you could say, you
9 know, it's over when it's over, so maybe when the
10 sale closed, but certainly there were points -- you
11 know, maybe I would make note of the revision the
12 original stocking course made to its bid where it --
13 probably a vow comes of secured creditors being the
14 only beneficial party of the sale increase.

15 BY MR. KINAS:

16 Q. So let's go to your third supplemental
17 declaration. This is the Exhibit 3, 1307. Let me
18 know when you have that in front of you.

19 A. Sure. (Examining documents.)

20 I have Exhibit 3 in front of me.

21 Q. And have you seen this exhibit before?

22 A. Yes.

23 Q. And on -- it's actually the fourth page
24 of the exhibit, you -- your e-signature is affixed.

25 Do you see that?

1 **A. You said the fourth page?**

2 Q. It's actually the fourth page. It's
3 numbered 3, but the fourth page in has your
4 e-signature attached -- affixed.

5 **A. I see it, yes.**

6 Q. And did you authorize the debtor to affix
7 your e-signature to this third supplemental
8 declaration?

9 **A. Yes, I did.**

10 Q. So on the second page of ECF 1307, which
11 is Exhibit 3, there's a Paragraph numbered 3 that
12 starts on Line 16.

13 Could you read Paragraph numbered 3 to
14 yourself and let me know when you're done?

15 **THE WITNESS: I apologize. Can you**
16 **redirect me to the page number?**

17 BY MR. KINAS:

18 Q. Page 2, Paragraph 3.

19 **A. Okay. The one that begins with, On**
20 **September 22nd?**

21 Q. Yes. If you could read that to yourself
22 and let me know when you're done, that would be
23 great.

24 **A. (Examining documents.)**

25 **Okay. I'm done reading.**

1 Q. So as to Paragraph 3, it mentions that
2 you have received combined monthly fee statements
3 from FTI; is that correct?

4 A. Yes, that's right.

5 Q. And in your earlier declarations, you did
6 not have the benefit of reviewing those statements.
7 They were not in your possession; is that correct?

8 A. The full invoices, I did not have in my
9 possession, so I could not review them; at least
10 initially.

11 Q. Again, on that same page -- and it goes
12 over to the following page -- if you can see on Line
13 23 of Exhibit 3, there's a Paragraph 4 that also
14 goes over to the next page.

15 Could you read that to yourself for a
16 second and then let me know when you're done?

17 A. Yes. (Examining documents.)

18 Okay. I'm done.

19 Q. So as to the FTI monthly statements that
20 you received, earlier in your last declaration, you
21 described the process about how you reviewed each
22 time entry and reviewed it for reasonableness and
23 necessity.

24 Is that the -- now that you've had the
25 FTI invoices, is that the same process you employed

1 when you reviewed the FTI statements?

2 **A. Yes.**

3 Q. And did you find that any of their time
4 was unnecessary to the sale process?

5 **A. No, not -- not on my review.**

6 Q. And did you find that any of the FTI time
7 was unreasonable as part of the sale process?

8 **A. No, especially considering that they were**
9 **generous enough to provide a flat bill rate across**
10 **their team, which is maybe unusual from what I've**
11 **seen.**

12 Q. So the first line of Paragraph 4 says --
13 that on Line 23 is, "on request of the debtor and in
14 response to the issues raised in the objections."

15 Do you see that statement?

16 **A. You said Line 23, Paragraph 4?**

17 Q. Of Paragraph 4.

18 Do you see that phrase?

19 **A. Yes, I do.**

20 Q. And so that's -- is that the same phrase
21 that you also used in Exhibit 2?

22 **A. It appears to be, yes.**

23 Q. So if I asked you the identical
24 questions, your answers would be the same as to the
25 items in that phrase?

1 MR. MANN: Objection. Form.

2 THE WITNESS: Generally, yes, I would say
3 so, with the difference of maybe -- I don't know the
4 dates, but a week of context in between, maybe, but
5 the exercise and I believe the meaning of that
6 statement are the same.

7 BY MR. KINAS:

8 Q. So describe generally what you did to
9 determine, again, the reasonableness and necessity
10 of the FTI fees as it relates to the sale motion.

11 A. Sure. Specifically, FTI's?

12 Q. Yes.

13 A. Yeah. So I -- after receiving individual
14 invoices from Michael Tucker, first I tallied the
15 fees included as it related to the sale process to
16 get a total and compare it to the original estimate
17 filed with the surcharge.

18 Then I looked through each period's
19 invoice starting with reviewing the task code
20 related to the sale process and then the amount of
21 fees in each period's invoice and then moved to the
22 individual time entries of that task code.

23 I reviewed the individual time entries.
24 I checked the date of the time entry. I checked the
25 timekeeper of the time entry. I checked the dollar



1 amount and the amount of hours of the time entry.

2 I checked the content of the memo.

3 Generally, the same process as the other
4 professional invoices that I reviewed.

5 Q. And to your knowledge, FTI was hired by
6 the unsecured creditors committee; is that true?

7 A. That -- that's my understanding of their
8 role on this bankruptcy.

9 Q. And when you looked through FTI's time
10 entries, did you identify any services rendered by
11 FTI that were specifically benefiting the unsecured
12 creditors committee?

13 A. With the context of the bankruptcy and
14 the sale process in mind, that being that the
15 proceeds generated by the sale only included
16 proceeds that would, at least from my understanding,
17 only benefit the secured creditors.

18 And since that billing category or task
19 code and the time entries within that task code for
20 each period were only related to the sale, in
21 disposition of assets on my review, the entries
22 within would inherently not be for the benefit of
23 the unsecured creditors.

24 Though, I'm sure every professional, you
25 know, tries to be mindful of the purpose of the

1 bankruptcy and the wellbeing of the estate, but
2 that, from my understanding, was not the point or
3 outcome of the time entries and the efforts in those
4 time entries that resulted in the sale since it only
5 benefitted secured creditors.

6 Q. And do you have any understanding as to
7 whether FTI believed that only the secured creditors
8 were going to benefit from FTI's services at the
9 time they performed them?

10 MR. MANN: Objection to form.

11 MR. MATOTT: Objection. Calls for
12 speculation.

13 THE WITNESS: I don't know that I can
14 speculate as to what FTI believed at that time,
15 other than my review of the time entries, the work
16 that was described in those time entries, the amount
17 of time in those entries, the date, and the ultimate
18 outcome of the sale process, which they materially
19 assisted with that resulted in the sale of the
20 secured lenders' collateral.

21 BY MR. KINAS:

22 Q. So same document, Exhibit 3, Paragraph 5.
23 Again, this is on the third page of Exhibit 3,
24 Paragraph 5.

25 Can you read that?

1 Do you see it starts at Line 10?

2 Could you read that to yourself and let
3 me know when you're done?

4 **A. Sure. (Examining documents.)**

5 **Okay.**

6 Q. And so as to -- so the law firm of Seward
7 & Kissel represents the unsecured creditors
8 committee; is that your understanding?

9 **A. That's right.**

10 Q. And did you analyze S&K's -- let's call
11 it -- just go -- for ease of reference, did you
12 analyze S&K's fee statements item by item, time
13 entry by time entry?

14 **A. Yes, just as I did with the others.**

15 Q. And if you could read Paragraph 6 to
16 yourself and let me know when you're done.

17 **A. (Examining documents.)**

18 **I've read Paragraph 6.**

19 Q. So Paragraph 6 mentions things that the
20 committee professionals were closely involved in
21 reviewing and negotiating and revising, the bidding
22 procedures and related sale documents and other
23 items.

24 So as to Paragraph 6, did you create this
25 paragraph of your own knowledge, or did someone

1 supply this information to you?

2 MR. MANN: Objection to form.

3 MR. MATOTT: Objection to the extent it
4 calls for privileged information as well.

5 THE WITNESS: Sure. I sat down with
6 counsel and developed this paragraph.

7 BY MR. KINAS:

8 Q. And did you sit down with committee
9 counsel or debtor's counsel?

10 A. Not -- not with respect to this
11 declaration. This was with debtor counsel. And
12 developed this declaration on my own personal
13 knowledge and -- sorry. One second. (Examining
14 documents.)

15 And certainly gave my feedback on what I
16 believed to be true as it related to this
17 declaration and this paragraph.

18 Q. Did you independently do any due
19 diligence to confirm that the items supplied to you
20 by counsel actually benefitted the sale process?

21 MR. MANN: Objection to form.

22 MR. MATOTT: Objection. Misstates the
23 testimony.

24 THE WITNESS: Sorry. Could you repeat
25 your question, please?



1 BY MR. KINAS:

2 Q. Sure.

3 So on Paragraph 6, can you -- can you, as
4 you go through that, identify which items you had
5 specific knowledge that the committee was involved
6 in?

7 MR. MANN: Same objections, by the way.

8 **THE WITNESS: So you're asking if I**
9 **independently myself --**

10 BY MR. KINAS:

11 Q. Yes. I want to know which ones you knew
12 about and which ones you received information from
13 the debtor's counsel on.

14 **A. And you're asking whether or not I knew**
15 **of or had seen specific instances where the**
16 **testimony in this paragraph which would make that**
17 **true?**

18 Q. Yes.

19 **A. Yes.**

20 Q. So you're saying you had personal
21 knowledge of everything in Paragraph 6 as to what
22 the committee did?

23 **A. Yes.**

24 Q. So as to Paragraph 7 on the same page, if
25 you could read that to yourself and let me know when

1 you're done.

2 **A. (Examining documents.)**

3 **Okay.**

4 Q. So same thing. Did you develop Paragraph
5 7 with the help of debtor's counsel?

6 MR. MANN: Objection to form.

7 **THE WITNESS: Yes.**

8 BY MR. KINAS:

9 Q. Anyone else?

10 Did you -- did you consult with committee
11 counsel?

12 **A. I don't believe I had any conversations**
13 **with committee counsel. Maybe I had had a**
14 **conversation with committee counsel at some point,**
15 **but specifically related to this paragraph and the**
16 **language in it, I don't believe so; not from my**
17 **memory, at least.**

18 Q. As to Paragraph 8, could you read that to
19 yourself and let me know when you're done?

20 **A. Sure. (Examining documents.)**

21 **Okay.**

22 Q. And same question as to Paragraph 8.

23 Did you develop the language of this
24 paragraph in consultation with the debtor's counsel?

25 MR. MANN: Objection to form.

1 THE WITNESS: Yeah. I certainly sat down
2 with debtor counsel, like the rest of this document,
3 and helped and assisted with the development and
4 crafting this language.

5 BY MR. KINAS:

6 Q. So at any point in the sale process, did
7 any lawyers at the committee counsel tell you that
8 the unsecured creditors were unlikely to receive a
9 distribution under the plan?

10 MR. MANN: Objection to form.

11 MR. MATOTT: Objection to form and
12 objection attorney-client privilege.

13 THE WITNESS: Yeah. It would be very
14 difficult for me to say whether or not that was ever
15 said. I -- I'm -- we have had several discussions
16 throughout the case as the case, as you may know,
17 has had lots of turns of events and in significant
18 ways.

19 And if that was ever said or a position
20 that the committee may have held, I -- I don't feel
21 comfortable saying whether or not that was exactly a
22 conversation that happened, but it's certainly
23 possible.

24 BY MR. KINAS:

25 Q. Did any members of the committee's law



1 firm ever share to you as part of the sale process
2 that they were providing services for the benefit of
3 the secured creditors?

4 A. I'm sorry. Could you repeat your
5 question?

6 MR. MATOTT: Objection to form.

7 BY MR. KINAS:

8 Q. Yes.

9 Did -- at any point during the sale
10 process, did lawyers for the unsecured creditors
11 committee share with you that they were providing
12 legal services for the benefit of the secured
13 creditors?

14 MR. MANN: Objection to form.

15 MR. MATOTT: Object on privilege grounds
16 as well.

17 THE WITNESS: I don't know that the
18 intention of the work, you know, that the
19 committee's professionals were doing was ever
20 explicitly shared with me.

21 But knowing all the professionals in this
22 case, I'm certain that they all know the intentions
23 and point of the bankruptcy and that some of their
24 actions may have not been for the direct benefit
25 solely of their client.

1 BY MR. KINAS:

2 Q. So the committee might have been
3 providing some services for the benefit of their
4 client and not for the secured creditors?

5 MR. MANN: Objection to form.

6 MR. MATOTT: Objection. Calls for
7 speculation.

8 You can answer, to the extent you know.

9 THE WITNESS: Sure. I'm sure the
10 committee professionals, as any good bankruptcy
11 professional would, always has their client in mind.

12 I don't know that they ever said that
13 they were specifically doing any particular, you
14 know, time entry for the purpose of, you know, one
15 party other than maybe knowing that, at some point
16 early -- earlier than the auction, at the very
17 least, that the bidding process -- prospects had
18 diminished or not yielded at least as close to the
19 optimistic results as initially planned.

20 But I don't know that anyone ever clearly
21 said to me, We are working specifically on this task
22 or for any particular party other than the estate.

23 The outcome of the sale process did
24 clearly benefit almost exclusively the secured
25 creditors maybe with the aside of lease assumptions



1 **that happened.**

2 MR. KISSNER: Hi. This is Andrew Kissner
3 from MoFo. Could I just ask the committee's counsel
4 to please refrain from speaking objections. Your
5 objection should be to the form of the question.
6 Thank you.

7 MR. KINAS: So that's all the questions I
8 have.

9 Andrew or anybody, do you have any
10 additional questions for Tanner James?

11 MR. MATOTT: I'm not sure if that was to
12 Andrew Kissner, but this is Andrew Matott for the
13 committee here. We will have some questions. We
14 would just like 10 minutes to consult with Mr. Mann
15 offline and rejoin.

16 MR. KINAS: Andrew, do you have any
17 questions? Kissner, Andrew Kissner.

18 MR. KISSNER: I do not. Thanks, Rob.

19 MR. KINAS: Okay.

20 MR. MANN: Yeah. Just -- if we could
21 just take a 10-minute a break --

22 MR. KINAS: Yeah.

23 MR. MANN: -- and we'll come back with
24 some questions.

25 (Recess 10:58 to 11:16 a.m.)

1 EXAMINATION

2 BY MR. MATOTT:

3 Q. So, again, for the record, this is Andrew
4 Matott, counsel to the official committee of
5 unsecured creditors. Just a couple more questions
6 for you.

7 I want to direct your attention back to
8 what's Docket 1307. It was your third supplemental
9 declaration.

10 A. Okay.

11 Q. And turning to Paragraph 3, which starts
12 on Line 16, let me know when you're there.

13 A. (Examining documents.)

14 Great. I'm there.

15 Q. And the billing statements that you refer
16 to here from FTI were provided to you on September
17 22nd; is that right?

18 A. Yeah, that sounds right.

19 Q. Were you aware -- are you aware any time
20 after this declaration FTI filed those invoices to
21 the docket in this case as part of their monthly fee
22 statement?

23 A. Yes. I do believe they filed them
24 shortly after, if not the same day. I don't
25 remember exactly which day.

1 Q. And did you review those file invoices
2 from FTI?

3 A. Yes, I did.

4 Q. Were they substantially the same if not
5 -- strike that.

6 Were they the same as the invoices that
7 you're referring to in Paragraph 3 here of your
8 declaration?

9 A. Yes. I didn't completely reconduct the
10 exercise, but I certainly checked each period's
11 invoice to make sure that it was, you know, the
12 same, and that I didn't see any discrepancies --
13 material discrepancies of the contents of them.

14 Q. Thanks.

15 And shifting gears slightly, you were
16 asked about whether you believe the fees that you
17 reviewed were necessary and reasonable.

18 You're not an attorney, are you,
19 Mr. James?

20 A. I am not an attorney.

21 Q. So can you just explain what you mean
22 when you say that the fees you reviewed were
23 necessary?

24 A. Sure. Throughout this case, there's been
25 significant effort by, you know, debtor

1 professionals and committee professionals alike that
2 were what I would, I guess, describe as an active
3 role versus maybe a passive role.

4 And those fees, from my experience and,
5 you know, role on this case, the work streams that
6 were done that resulted in those fees were certainly
7 helpful from the debtor's perspective.

8 If not helpful, you know, I guess you
9 could describe them as critical in some instances,
10 especially in proving the outcome of the sale
11 process to which, you know, the secured creditors
12 were the direct beneficiary of, I guess, is -- in my
13 non-attorney view.

14 And without any of the work that was
15 done, I think I would be ill advised to say that the
16 sale still would have closed or been approved in any
17 variety of speculative outcomes, I guess.

18 Q. And, broadly speaking, can you walk us
19 through what -- at what stages of the case those
20 necessary fees were incurred?

21 A. Sure. You know, early on in the case, I
22 believe relatively near to when the committee was
23 hired and retained, the committee certainly
24 jumped -- you know, professionals jumped on in
25 helping us with the bid procedures, the documents,

1 the thought processes of the marketing process.

2 The -- you know, eventually conversations
3 with -- not directly, maybe with the parties
4 themselves at least that early, but conversations
5 with us in deliberating how to market these assets,
6 I would say the development of, you know, definitive
7 documents during the period where the stocking horse
8 was selected.

9 And I'm also certainly aware of the
10 committee's professionals' roles in the critical
11 moments of, you know, the auction and the actual
12 sale process and -- as well as the development of,
13 you know, the final APA with the winning bidder.

14 Those are all things that --

15 Q. Oh, sorry. Go ahead.

16 A. Yeah. No worries.

17 Those are all things that, you know, I
18 can personally, you know, reflect on and, you know,
19 I guess, determine that I would say that they were
20 necessary to the sale closing the way that it did.

21 Q. And when you describe time entries as
22 reasonable, can you describe what you mean by that?

23 A. Sure. Generally, if I've had a -- I
24 guess what I would call a large role on this case
25 and from the seat of the debtor adviser and I had

1 the pleasure of interacting with most professionals
2 throughout the estate and an awareness of
3 milestones, key milestones, throughout the
4 bankruptcy as I'm often tasked with working on
5 aspects of those milestones.

6 And I'm familiar with who I'm interacting
7 with and who knows what -- who may be working on
8 certain things, and when I reviewed the fee
9 statements, it would -- it made sense to me that
10 certain individuals from certain parties, especially
11 the committee professionals, that they were
12 consistent with -- their time entries were
13 consistent with what I would expect them to be.

14 FTI even, you know, billing at, I guess,
15 what I would call a discount, and their work streams
16 and fees were, you know, ultimately consistent with
17 what I would expect for the sale process that we
18 were in.

19 MR. MATOTT: Thank you. The committee
20 has no further questions. Thanks, everybody, for
21 your time.

22 MR. MANN: I have none.

23 MR. KINAS: Great. Thank you so very
24 much.

25

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

\$	18 23:19 26:22	5	agree 8:18
\$27,000 14:22	19 23:19 25:3	5 33:22,24	agreed 6:3
-	2	506- 23:3	amount 14:16 31:20 32:1 33:16
-for 34:11	2 6:6 7:1,2 9:25 10:14, 20 19:7 26:22 28:18 30:21	6	amounts 13:9 15:4 17:7
1	20,000 14:24	6 34:15,18,19,24 36:3, 21	analysis 13:14 15:13 18:1 20:19,22,23 21:6 22:22 23:3,21 26:4,17
1 6:6 9:8 10:8	20th 12:12	7	analyze 23:23 26:23 34:10,12
10 34:1 41:14	22nd 6:23 28:20	7 36:24 37:5	Andrew 7:9 8:11 16:9 41:2,9, 12,16,17
10-minute 41:21	23 29:13 30:13,16	8	Angela 14:12
1061 23:10	255 23:10	8 37:18,22	answers 11:2 30:24
10:58 41:25	27,000 15:2	A	apologize 28:15
11 26:4	3	a.m. 41:25	appearing 9:12
11:16 41:25	3 6:6 7:1,7 27:17,20 28:3,11,13,18 29:1,13 33:22,23	abbreviated 8:19	appears 30:22
12 8:2	30(b)(5)(a) 6:5	actions 39:24	approval 19:5
1244 6:25 7:3,14,16 9:3 10:1,8	30(b)(5)(c) 6:5	actual 13:6	approved 22:10
1280- 8:7	4	additional 11:18,23 12:8 13:3 18:1 20:18 21:5 41:10	approximately 12:7
1281 7:10 8:8,9	4 10:21 11:8 19:8,12 23:19 24:18,19 29:13 30:12,16,17	adviser 17:10,23	asserting 21:10
1307 6:25 7:7,14 9:3 27:17 28:10		affix 10:16 28:6	asset 13:9
1507 9:5		affixed 10:10 27:24 28:4	assets 15:14 26:8 32:21
16 10:20 19:13 28:12			assisted

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

33:19 38:3	28:19	buyer 19:6 22:10	clients 16:24
assume 24:14	believed 33:7,14 35:16		close 18:17 40:18
assumptions 40:25	beneficial 27:14	C	closed 18:14 27:10
attached 28:4	benefit 18:3 21:25 24:1,5 25:3,14 27:1,4 29:6 32:17,22 33:8 39:2,12, 24 40:3,24	call 34:10	closely 34:20
attorney 20:4 22:21	benefiting 32:11	called 7:17	closing 19:4 22:10
attorney-client 21:9,11 24:12 38:12	benefitted 18:25 33:5 35:20	calls 21:9 22:3 24:11 26:1 33:11 35:4 40:6	code 14:4 31:19,22 32:19
attorneys 20:22 22:25 24:15	bid 27:12	capacity 17:9	codes 13:10,16,17 17:4 22:8
auction 40:16	bidding 34:21 40:17	case 23:9,12,17 38:16 39:22	collateral 18:19 23:25 27:1 33:20
August 6:23	bill 30:9	cases 17:24 22:15 23:2	collected 26:9
authorize 10:16 28:6	billed 16:22 18:16 19:3	category 32:18	collection 19:5
AVT 19:20 20:2,5	billing 16:24 17:7 32:18	caused 20:18	combined 29:2
aware 19:24 25:7,10	billings 13:4,11 16:25	chance 11:7	comfortable 38:21
Axelrod 11:24	bit 9:4 12:13	Chapter 26:4	commencement 6:2
B	bottom 10:14	charge 17:10	comments 15:7 24:25
back 19:7 23:18 26:21 41:23	break 41:21	checked 13:11 31:24,25 32:2	committee 7:10 16:9,11 17:24 32:6,12 34:8,20 35:8 36:5,22 37:10,13,14 38:7,20 39:11 40:2,10 41:13
bankruptcy 25:24 26:18 32:8,13 33:1 39:23 40:10	Brett 11:23	checking 13:8,23 14:4 16:24	committee's 38:25 39:19 41:3
based 20:23	briefs 22:16	Circuit 23:10	communicate 23:13
basis 14:10,11 17:3	budget's 17:15	cited 22:15,20 23:16	compare 31:16
began 15:5	budgets 17:11	clarification 13:3	
begins		client 6:21 39:25 40:4,11	

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

compiled 12:23 conclude 15:13 conclusion 22:4 confirm 7:2 35:19 confirmed 19:2 consistent 13:12 consolidate 12:21 consolidated 12:20 consult 37:10 41:14 consultation 22:11 37:24 content 13:19 32:2 contents 14:3 contested 17:17 context 22:6 31:4 32:13 contribute 19:4 conversation 11:19,22 14:12,13 24:14 37:14 38:22 conversations 15:3 37:12 correct 9:3,15 17:1,4 21:20 25:8,11 29:3,7 cost 14:11,19	costs 14:22 15:5 counsel 11:20 15:3,7 20:23 21:2,3 23:13 24:24 35:6,9,11,20 36:13 37:5,11,13,14,24 38:2, 7 41:3 court 6:4 9:13 22:12 crafting 38:4 create 34:24 creditor 18:4 creditors 18:25 22:1 24:1,5 25:4,8,14,15,23 26:5 27:2,5,13 32:6,12,17, 23 33:5,7 34:7 38:8 39:3,10,13 40:4,25 creditors' 23:25 26:25 cut 9:4 <hr/> D <hr/> date 12:10 13:18 18:23,24 31:24 33:17 dates 18:9 31:4 days 12:11 Debbie 23:9 debtor 10:16 11:14,17 12:8, 16 16:10 17:10 22:21 23:14 25:7,10 28:6 30:13 35:11 38:2	debtor's 17:23 19:21 21:3 23:24 26:3,24 27:4 35:9 36:13 37:5,24 declaration 7:12,14 8:13,15,16 10:2 15:6 24:24 27:17 28:8 29:20 35:11,12, 17 declarations 29:5 depo 6:24 deposition 6:3 9:9,14 describe 31:8 details 13:3 22:19 determine 12:4 15:18 18:12 27:3 31:9 determined 26:7 develop 37:4,23 developed 24:24 35:6,12 developing 15:6,8 17:11 development 38:3 difference 31:3 differently 17:6 difficult 38:14 diligence 35:19 diminished 40:18	DIP 17:11 direct 39:24 discussion 11:1 discussions 38:15 disposition 13:10 32:21 distribution 25:24 26:6,14,19 38:9 divulge 24:11 docket 13:1 document 8:22 10:4 14:19 33:22 38:2 documents 7:4,8 10:5,25 11:10 14:15,17,20 19:11 27:19 28:24 29:17 34:4,17,22 35:14 37:2, 20 dollar 13:8 31:25 due 12:11,12 35:18 duly 6:11 duplicate 16:25 <hr/> E <hr/> e-mail 8:14 14:14 e-signature 27:24 28:4,7 earlier 29:5,20 40:16
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Tanner James

In re: Cash Cloud Inc.

early 40:16	estimate 31:16	expenses 23:22	find 15:22 30:3,6
ease 34:11	estimates 13:12,13	expert 17:17,19	findings 15:4 20:24 23:13
easy 12:24	events 38:17	explaining 15:3	firm 34:6 39:1
ECF 6:25 7:3,7 8:6,7 9:3 10:1 28:10	exact 12:10	explicitly 39:20	flat 30:9
effect 8:14	EXAMINATION 6:15	extent 12:3,24 14:7 21:8 24:10 35:3 40:8	folder 12:24
effort 18:13	examine 18:2	<hr/>	form 14:7 16:4 18:6 20:20 21:7,21 22:2,17 23:6 24:9,20,21 25:16,25 26:15 27:6,7 31:1 33:10 35:2,21 37:6,25 38:10,11 39:6,14 40:5 41:5
efforts 18:16 23:24 26:24 27:4 33:3	examined 6:12 18:5,7	F <hr/>	found 15:4 19:3
electronic 10:17	examining 7:4,8 10:5,25 11:10 19:11 27:19 28:24 29:17 34:4,17 35:13 37:2,20	F.3rd 23:10	fourth 27:23 28:1,2,3
employed 29:25	Excellent 8:20 9:6,12	fact 19:4	front 9:2 27:18,20
encumbered 18:19	exception 14:8	familiarized 23:16	FTI 29:3,19,25 30:1,6 31:10 32:5,11 33:7,14
engagements 17:25	excess 14:24	fee 13:7 16:18 18:23 29:2 34:12	FTI's 31:11 32:9 33:8
enhance 23:24 26:25	excessive 17:1	feedback 24:25 35:15	FTIS 13:1
Enigma 8:14 19:21 20:12	exchange 14:14	feel 38:20	full 29:8
entries 13:17 14:5 18:10,23 19:3 31:22,23 32:10, 19,21 33:3,4,15,16,17	exclusively 40:24	fees 7:21 12:2 14:7,9,16 15:5,14,15,18,22 16:2, 22,23 17:12,18 18:2,8 19:3 21:6,16,19,24 22:5,6 23:21 25:19 31:10,15,21	<hr/>
entry 13:18,19,20,22 14:3,5 18:25 29:22 31:24,25 32:1 34:13 40:14	excuse 16:8	filed 6:24 12:21,25 16:22 17:12 19:20 22:21 31:17	G <hr/>
equity 25:11,15 26:12,13,18	exercise 31:5	filing 8:15 15:6,8	gave 24:24 35:15
errors 16:25	exhibit 6:6 7:2,7 9:8,25 10:8, 14,20 19:7 26:22 27:17,20,21,24 28:11 29:13 30:21 33:22,23	financial 17:10,23	general 13:25
estate 25:24 33:1 40:22	Exhibits 7:1		generally 17:2 19:23 31:2,8 32:3

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

generated 32:15	holders 25:11,15 26:12,13	intentions 39:22	25:1,21 26:11,20 27:15 28:17 31:7 33:21 35:7 36:1,10 37:8 38:5,24 39:7 40:1 41:7,16,19,22
generous 30:9	hourly 14:10	investigation 15:12	
Genesis 6:22 19:21 20:15	hours 32:1	invoice 31:19,21	Kissel 34:7
gist 8:16	<hr/> I <hr/>	invoiced 17:13	Kissner 8:11 41:2,12,17,18
Give 11:9	identical 30:23	invoices 12:3,21,23,25 13:7,8 17:14 21:15,18 22:7 29:8,25 31:14 32:4	knew 36:11,14
good 6:17 7:15 40:10	identification 6:7	involved 16:17 34:20 36:5	knowing 39:21 40:15
great 8:10 28:23	identify 32:10 36:4	involvement 14:2 17:21	knowledge 9:18 32:5 34:25 35:13 36:5,21
grounds 39:15	impossible 18:12	issues 19:9,15 20:17 30:14	Koffroth 11:23
guess 17:6 23:14 24:14 27:8	included 13:5 14:6,9,16,23 15:4,16 22:6 23:22 31:15 32:15	item 34:12	<hr/> L <hr/>
<hr/> H <hr/>	increase 27:14	items 30:25 34:23 35:19 36:4	language 37:16,23 38:4
handed 7:1 9:7	independently 35:18 36:9	<hr/> J <hr/>	law 22:20 23:12,17 34:6 38:25
happened 38:22 41:1	individual 13:8 17:3 31:13,22,23	James 6:10,19 11:7 41:10	lawyers 38:7 39:10
happy 9:22	information 35:1,4 36:12	job 23:11	lease 40:25
held 38:20	inherently 32:22	<hr/> K <hr/>	leave 20:21 22:22
helped 38:3	initially 22:20 29:10 40:19	K-I-N-A-S 6:21	leaving 22:24
helpful 8:12	initiated 26:10	keeping 17:13	legal 20:22 22:4,22,24 39:12
high 15:9	instances 14:24 36:15	Kinas 6:16,20 7:13 8:1,6,10, 17,20,24 9:1 11:6 15:11 16:6,15 18:20 20:11 21:1,13,23 22:13,23 23:8 24:17	legality 25:18
high-level 22:19	instructed 20:23 21:5		lenders 18:18
highlights 22:19	intention 39:18		lenders'
hired 32:5			

Tanner James

In re: Cash Cloud Inc.

33:20 level 15:9 Lines 11:3 23:19 liquidating 26:4 listing 12:20 longer 12:13 looked 31:18 32:9 loosely 22:18 lots 38:17	material 17:8 materially 33:18 Matott 7:9 8:9,22 12:17 16:8, 9 18:6 20:8,20 21:8 22:3 23:4 24:10,21 26:1 27:7 33:11 35:3, 22 38:11 39:6,15 40:6 41:11,12 matter 17:17 24:15 matters 17:1 meaning 31:5 members 38:25 memo 13:19 14:3 32:2 memory 14:9 15:1 37:17 mentioned 7:19 mentions 29:1 34:19 met 6:23 Michael 31:14 milestones 18:11 mind 18:11,15 32:14 40:11 mindful 32:25 minutes 41:14 missing 7:23 8:1,5 12:25	Misstates 35:22 Mofo 8:12 41:3 moment 11:9 monitoring 17:14 monthly 29:2,19 morning 6:17 motion 17:21 19:22,25 22:20 23:23 31:10 motions 23:16 moved 31:21 N nature 17:2 necessity 16:3,19,23 17:18 23:23 26:24 29:23 31:9 negotiating 34:21 net 18:17 Nick 11:22 Ninth 23:10 Nos 6:6 note 13:18,23 16:23 18:9, 24 27:11	noted 13:12 notice 9:9 noticed 14:15,18,19,25 15:2 noticing 13:4 14:11,21,22 noting 14:21 NRCP/FRCP 6:5 number 7:18 14:17,18 19:8 28:16 numbered 10:21 28:3,11,13 O oath 9:15 Object 39:15 objection 7:11 12:17 16:4,11 18:6 20:2,6,12,15,20 21:7,8,21 22:2,3,17 23:4,6 24:9,10,20,21 25:16,25 26:1,15 27:6, 7 31:1 33:10,11 35:2, 3,21,22 37:6,25 38:10, 11,12 39:6,14 40:5,6 41:5 objections 19:9,16,19,20,25 20:18 22:14 30:14 36:7 41:4 Official 7:10 offline 41:15 optimistic
M			
made 18:9 27:12 mailing 14:20 maintaining 17:10 make 18:24 27:11 36:16 making 13:18,23 15:7 16:22 17:3,5 Mann 7:15,22,25 8:3,18 16:4,13 21:7,10,21 22:2,17 23:6 24:9,20 25:16,25 26:15 27:6 31:1 33:10 35:2,21 36:7 37:6,25 38:10 39:14 40:5 41:14,20, 23 marked 6:6 9:7 10:8			

Tanner James

In re: Cash Cloud Inc.

40:19	12:22 14:6 32:20	privilege 21:9,11 24:12 38:12 39:15	provided 21:25
order 12:19	period's 31:18,21	privileged 35:4	providing 39:2,11 40:3
ordered 22:11	personal 26:16 35:12 36:20	problem 22:24	Province 15:25 17:20
ordering 19:5	phone 14:13	procedures 34:22	Province's 16:21
ordinary 15:7	phrase 11:13 19:8,10 24:2,4, 6,7 25:2,13 26:22 30:18,20,25	proceeds 18:18 19:6 32:15,16	purpose 32:25 40:14
original 13:13 27:12 31:16	piece 22:8	process 12:5,6 13:4,9,21 15:7 29:21,25 30:4,7 31:15, 20 32:3,14 33:18 35:20 38:6 39:1,10 40:17,23	purposes 16:12
outcome 33:3,18 40:23	plan 26:4,14 38:9	professional 12:2 15:13,15,18,22 16:2,18,21 17:12 18:2, 7,8,23 23:21 32:4,24 40:11	pursuant 6:4
outlined 14:14	planned 40:19	professionals 13:15 17:13 18:13,17 21:19 34:20 39:19,21 40:10	put 13:24
P	point 7:15 20:10,13 33:2 37:14 38:6 39:9,23 40:15	professionals' 13:11	puzzle 22:9
pages 14:17	points 27:10	project 17:8	quantifiable 21:25
paragraph 10:21 11:8,13 19:8,12 23:19 24:18,19 26:21 28:11,13,18 29:1,13 30:12,16,17 33:22,24 34:15,18,19,24,25 35:6,17 36:3,16,21,24 37:4,15,18,22,24	position 38:19	projections 17:15	question 18:22 35:25 37:22 39:5 41:5
part 18:1 23:2,10 30:7 39:1	possession 29:7,9	projects 16:1,17	questions 9:17,21 11:2 30:24 41:7,10,13,17,24
parties 6:3 14:18,21,24,25 15:2 22:11,16 25:18	postage 14:10	prominently 16:20	R
party 14:1 27:14 40:15,22	preparation 23:2,11	promising 26:10	raised 19:9,15 20:17 30:14
Perfect 8:17	preparing 23:21	prospects 40:17	rate 30:9
perform 20:23	present 6:3	provide 8:6 30:9	reached 12:8 13:2
performed 33:9	preserve 23:24 26:24		read 10:23 11:3,7,11 20:2, 5,12 22:14,15 23:1,9, 12 28:13,21 29:15 33:25 34:2,15,18
period	printing 14:20		
	prior 6:2 16:22		

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

36:25 37:18	20 32:20 34:22 35:16	rest	
reading	37:15	38:2	S
28:25	relates	result	S&k's
ready	31:10	15:12,17,21	34:10,12
9:23	relating	resulted	sale
reasonable	17:17	22:9 33:4,19	12:5,6 13:4,9,21 15:14
16:23 21:16	relative	results	18:14,17 19:5 22:9
reasonableness	17:15 18:10	26:8,10 40:19	27:10,14 30:4,7 31:10,
16:3,19 17:18 21:6	relevant	retained	15,20 32:14,15,20
23:23 26:23 29:22	12:22 13:20 14:6	14:1	33:4,18,19 34:22
31:9	25:18	returning	35:20 38:6 39:1,9
recall	remember	19:7	40:23
12:7	12:10 17:25	review	sat
receive	rendered	12:1,24 13:6 15:17,21	24:23 35:5 38:1
25:24 26:5 38:8	32:10	16:2 18:8 19:2 20:13,	scenario
received	repeat	15,16 21:24 26:17	26:5
12:15 26:19 29:2,20	35:24 39:4	29:9 30:5 32:21 33:15	seat
36:12	rephrase	reviewed	17:22
receiving	9:22	13:16 14:5 15:5,15	secured
26:14 31:13	replies	16:18 20:3,9 21:15,18	18:4,18,25 22:1 23:25
recess	23:16	22:5,18 23:17 25:19	24:1,5 25:3,14 26:25
41:25	reply	29:21,22 30:1 31:23	27:1,5,13 32:17 33:5,
record	22:20	32:4	7,20 39:3,12 40:4,24
6:18 11:1 16:10	reporter	reviewing	SEI
redirect	6:4 9:13 11:4	16:21 17:11 22:7 29:6	13:1
28:16	representative	31:19 34:21	sentence
refer	14:1	revising	25:2
19:19	represents	34:21	September
reference	34:7	revision	12:12 28:20
34:11	request	27:11	services
referring	11:14 12:15 30:13	Reynolds	32:10 33:8 39:2,12
19:20	requested	23:9	40:3
reflect	11:17,25 12:1 13:1	Rob	set
16:10	reread	41:18	17:6 23:22
refrain	11:9	Robert	Seward
41:4	respect	6:20	34:6
rejoin	35:10	role	share
41:15	respond	13:25 17:7,8 32:8	39:1,11
related	21:12	roughly	shared
12:4 13:4,9,20 15:14	response	14:22	16:11 39:20
22:8 23:3 27:4 31:15,	18:21 19:9,15 30:14	Rules	signature
		6:4	10:10,17

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

significant 17:7 38:17	state 6:17	surprised 26:18	timekeeper 13:22,24 31:25
single 18:12	statement 8:19 30:15 31:6	sworn 6:8,11	timekeepers 17:5 18:9
sit 24:23 25:22 26:12 35:8	statements 6:4 13:7 16:18 29:2,6, 19 30:1 34:12	<hr/> T <hr/>	today 9:10,13,18 16:12 25:22 26:13
small 17:7	step 12:18	tallied 31:14	top 9:5
Snell 6:21	steps 12:16,20 15:10	Tanner 6:10,19,20 41:10	total 31:16
solely 27:4 39:25	stocking 27:12	task 12:9 13:10,16,17 14:4 17:4 22:8 31:19,22 32:18,19 40:21	track 17:13
sounds 20:1	streams 18:10	tasked 16:21	tracking 17:12
speaking 19:23 41:4	Stretto 13:2 14:9,13	tasks 11:18	transitory 17:6
speaks 8:23	Stretto's 14:16	Taylor-james- originated 24:6	transpired 26:17
specific 18:3 23:12 36:5,15	submitted 8:23	team 12:21 30:10	triangulating 16:25
specifically 13:17 22:7 31:11 32:11 37:15 40:13,21	successful 19:4	testified 6:12 17:16,19	trick 9:20
speculate 33:14	successfully 22:10 26:10	testimony 35:23 36:16	true 21:16 32:6 35:16 36:17
speculation 26:2 33:12 40:7	supplement 6:24,25 7:3,7	thing 37:4	truthfully 9:18
spew 25:20	supplemental 7:13,16,17 8:3,4,13,15 10:1 27:16 28:7	things 17:1 34:19	Tsai 14:12
standard 8:23	supplied 24:8 35:19	time 13:16,18,19,20,22 14:3,5 15:25 17:1 18:10,24 19:3 29:22 30:3,6 31:22,23,24,25 32:1,9,19 33:3,4,9,14, 15,16,17 34:12,13 40:14	Tucker 31:14
start 9:25	supply 35:1	time-entry 17:3 18:13	turn 10:19
started 9:23 13:6	supporting 22:19		turns 38:17
starting 31:19	surcharge 12:2,5 13:5,14 14:6, 10,16,23 15:16 17:21 19:21,25 23:22 25:19 31:17		type 17:4 24:23
starts 28:12 34:1			

Tanner James

In re: Cash Cloud Inc.

<hr/> <p style="text-align: center;">U</p> <hr/>	<p>whichever 14:1</p>	
<p>ultimate 33:17</p>	<p>Wilmer 6:21</p>	
<p>ultimately 22:9,11</p>	<p>word 23:15</p>	
<p>understand 9:14,21 18:21</p>	<p>work 11:12 17:5 18:10,16 22:22,24 33:15 39:18</p>	
<p>understanding 13:25 14:2 32:7,16 33:2,6 34:8</p>	<p>working 40:21</p>	
<p>undertake 11:18</p>	<p>write 24:18,19</p>	
<p>unique 14:24</p>	<hr/> <p style="text-align: center;">Y</p> <hr/>	
<p>unnecessary 15:19 30:4</p>	<p>years 17:20</p>	
<p>unreasonable 15:23 30:7</p>	<p>yielded 40:18</p>	
<p>unsecured 25:8,14,23 26:5 32:6, 11,23 34:7 38:8 39:10</p>		
<p>unusual 30:10</p>		
<hr/> <p style="text-align: center;">V</p> <hr/>		
<p>vow 27:13</p>		
<hr/> <p style="text-align: center;">W</p> <hr/>		
<p>waive 6:3</p>		
<p>ways 38:18</p>		
<p>week 8:15 12:11 31:4</p>		
<p>weeks 12:13</p>		
<p>wellbeing 33:1</p>		